

1 Honorable Judge Benjamin H. Settle
2 Honorable Judge David W. Christel
3
4
5
6
7

8
9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT SEATTLE
12
13

14 JESUS CHAVEZ FLORES,
15 Plaintiff,

v.
16

17 UNITED STATES IMMIGRATION AND
18 CUSTOMS ENFORCEMENT, et al,
19

20 Defendants.
21

22 No. 3:18-cv-05139-BHS-DWC
23
24 STIPULATED PROTECTIVE
25 ORDER
26

1. **PURPOSES AND LIMITATIONS**

2. Discovery in this action is likely to involve production of confidential, proprietary,
3 or private information for which special protection may be warranted. Accordingly, the
4 parties hereby stipulate to and petition the court to enter the following Stipulated
5 Protective Order. The parties acknowledge that this agreement is consistent with LCR
6 26(c). It does not confer blanket protection on all disclosures or responses to discovery,
7 the protection it affords from public disclosure and use extends only to the limited
8 information or items that are entitled to confidential treatment under the applicable legal
9 principles, and it does not presumptively entitle parties to file confidential information
10 under seal.
11
12

1 2. "CONFIDENTIAL" MATERIAL

2 "Confidential" material shall include the following documents and tangible things
3 produced or otherwise exchanged:

4 1. Video and photographs depicting detainees.
5 2. Personally Identifiable Information, and Sensitive Personally Identifiable
6 Information, to include birth dates, social security numbers, driver's license or state ID #,
7 passport numbers, alien registration numbers, alien files (A-Files), financial account
8 numbers, biometric identifiers, email addresses, home addresses, phone numbers, or other
9 information that could cause substantial harm, embarrassment, inconvenience, or
10 unfairness to an individual if disclosed. In addition, Sensitive PII includes citizenship or
11 immigration status, medical information, ethnic, religious, sexual orientation, or lifestyle
12 information, and account passwords, when paired with another identifier of an individual
13 (directly or indirectly inferred).

14 3. Documents, information, or material protected by the deliberative process
15 privilege and/or the law enforcement privilege, or designated as "Law Enforcement
16 Sensitive" including investigative reports.

17 4. Medical records.

18 5. Employment records.

19 3. SCOPE

20 The protections conferred by this agreement cover not only confidential material
21 (as defined above), but also (1) any information copied or extracted from confidential
22 material; (2) all copies, excerpts, summaries, or compilations of confidential material; and
23

(3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise. Either the GEO Defendants or the ICE Defendants will file a motion to seal the video and photographs depicting detainees that were previously filed and substitute into the record images that either redact or blur individual faces more specifically than as previously filed.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any confidential material only to:

(a) the receiving party's counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

1 (b) the officers, directors, and employees (including in house counsel) of the
2 receiving party to whom disclosure is reasonably necessary for this litigation, unless the
3 parties agree that a particular document or material produced is for Attorney's Eyes Only
4 and is so designated;

5
6 (c) experts and consultants to whom disclosure is reasonably necessary for this
7 litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
8 (Exhibit A);

9 (d) the court, court personnel, and court reporters and their staff;

10 (e) copy or imaging services retained by counsel to assist in the duplication of
11 confidential material, provided that counsel for the party retaining the copy or imaging
12 service instructs the service not to disclose any confidential material to third parties and to
13 immediately return all originals and copies of any confidential material;

14 (f) during their depositions, witnesses in the action to whom disclosure is
15 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be
16 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the
17 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
18 confidential material must be separately bound by the court reporter and may not be
19 disclosed to anyone except as permitted under this agreement;

20 (g) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information.

22 4.3 Filing Confidential Material. Before filing confidential material or
23 discussing or referencing such material in court filings, the filing party shall confer with
24 the designating party to determine whether the designating party will remove the

1 confidential designation, whether the document can be redacted, or whether a motion to
2 seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the
3 procedures that must be followed and the standards that will be applied when a party seeks
4 permission from the court to file material under seal.

5 In the interest of conservation of litigation resources and judicial efficiency, the
6 parties agree to the following terms for filing of the categories of confidential material
7 below:

8 (a) Video and photographs depicting individuals: any video or photographs
9 depicting individuals shall be blurred and/or partially redacted to protect the individual
10 identities prior to filing with the court, or filed with a stipulated motion to seal that
11 satisfies Local Civil Rule 5(g).

12 (b) Personally Identifiable Information, and Sensitive Personally Identifiable
13 Information: Any documents that contain personally identifiable information and/or
14 sensitive personally identifiable information, with the exception of medical records, shall
15 be filed openly with the court so long as the personally identifiable information and/or
16 sensitive personally identifiable information is redacted pursuant to paragraph 2, above. A
17 non-redacted copy may be filed with the court with a stipulated motion to seal that
18 satisfies Local Civil Rule 5(g).

19 5. **DESIGNATING PROTECTED MATERIAL**

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
21 party or non-party that designates information or items for protection under this agreement
22 must take care to limit any such designation to specific material that qualifies under the
23 appropriate standards. The designating party must designate for protection only those
24

1 parts of material, documents, items, or oral or written communications that qualify, so that
 2 other portions of the material, documents, items, or communications for which protection
 3 is not warranted are not swept unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that
 5 are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*,
 6 to unnecessarily encumber or delay the case development process or to impose
 7 unnecessary expenses and burdens on other parties) expose the designating party to
 8 sanctions.

9
 10 If it comes to a designating party's attention that information or items that it
 11 designated for protection do not qualify for protection, the designating party must
 12 promptly notify all other parties that it is withdrawing the mistaken designation.
 13

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 15 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated
 16 or ordered, disclosure or discovery material that qualifies for protection under this
 17 agreement must be clearly so designated before or when the material is disclosed or
 18 produced.

19 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
 20 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
 21 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page
 22 that contains confidential material. If only a portion or portions of the material on a page
 23 qualifies for protection, the producing party also must clearly identify the protected
 24 portion(s) (*e.g.*, by making appropriate markings in the margins).

1 (b) Testimony given in deposition or in other pretrial proceedings: the parties
 2 and any participating non-parties must identify on the record, during the deposition or
 3 other pretrial proceeding, all protected testimony, without prejudice to their right to so
 4 designate other testimony after reviewing the transcript. Any party or non-party may,
 5 within fifteen days after receiving the transcript of the deposition or other pretrial
 6 proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a
 7 party or non-party desires to protect confidential information at trial, the issue should be
 8 addressed during the pre-trial conference.

9
 10 (c) Other tangible items: the producing party must affix in a prominent place
 11 on the exterior of the container or containers in which the information or item is stored the
 12 word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
 13 protection, the producing party, to the extent practicable, shall identify the protected
 14 portion(s).

15
 16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
 17 to designate qualified information or items does not, standing alone, waive the designating
 18 party’s right to secure protection under this agreement for such material. Upon timely
 19 correction of a designation, the receiving party must make reasonable efforts to ensure
 20 that the material is treated in accordance with the provisions of this agreement.
 21

22 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23 6.1 Timing of Challenges. Any party or non-party may challenge a designation
 24 of confidentiality at any time. Unless a prompt challenge to a designating party’s
 25 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
 26 unnecessary economic burdens, or a significant disruption or delay of the litigation, a

1 party does not waive its right to challenge a confidentiality designation by electing not to
2 mount a challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to resolve any
4 dispute regarding confidential designations without court involvement. Any motion
5 regarding confidential designations or for a protective order must include a certification,
6 in the motion or in a declaration or affidavit, that the movant has engaged in a good faith
7 meet and confer conference with other affected parties in an effort to resolve the dispute
8 without court action. The certification must list the date, manner, and participants to the
9 conference. A good faith effort to confer requires a face-to-face meeting or a telephone
10 conference.

11 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
12 intervention, the designating party may file and serve a motion to retain confidentiality
13 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable).
14 The burden of persuasion in any such motion shall be on the designating party. Frivolous
15 challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary
16 expenses and burdens on other parties) may expose the challenging party to sanctions. All
17 parties shall continue to maintain the material in question as confidential until the court
18 rules on the challenge.

19 7. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
20 **OTHER LITIGATION**

21 If a party is served with a subpoena or a court order issued in other litigation that
22 compels disclosure of any information or items designated in this action as
23 “CONFIDENTIAL,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as **Exhibit A**.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-

1 discovery order or agreement that provides for production without prior privilege review.
2 The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set
3 forth herein.

4 10. **NON TERMINATION AND RETURN OF DOCUMENTS**

5 Within 60 days after the termination of this action, including all appeals, each
6 receiving party must return all confidential material to the producing party, including all
7 copies, extracts and summaries thereof. Alternatively, the parties may agree upon
8 appropriate methods of destruction.

9
10 Notwithstanding this provision, counsel are entitled to retain one archival copy of
11 all documents filed with the court, trial, deposition, and hearing transcripts,
12 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
13 consultant and expert work product, even if such materials contain confidential material.

14
15 The confidentiality obligations imposed by this agreement shall remain in effect
16 until a designating party agrees otherwise in writing or a court orders otherwise.

17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18 STIPULATED this 26th day of September, 2018.

19
20 McNAUL EBEL NAWROT & HELGREN PLLC

21 By: s/ Theresa M. DeMonte
22 Daniel M. Weiskopf, WSBA #44941
23 Theresa M. DeMonte, WSBA#43994

24 600 University St., Suite 2700
25 Seattle, WA 98101
Phone: (206) 467-1816
dweiskopf@mcaul.com
tdemonte@mcaul.com

26
Attorneys for Plaintiff Jesus Chavez Flores

ANNETTE L. HAYES
UNITED STATES ATTORNEY

By: s/Sarah K. Morehead
Sarah K. Morehead, WSBA #29680
Assistant United States Attorney

700 Stewart St., Suite 5220
Seattle, WA 98101
Phone: (206) 553-7970
sarah.morehead@usdoj.gov

Attorneys for ICE Defendants

III BRANCHES LAW, PLLC

By: s/Joan K. Mell
Joan K. Mell, WSBA #21319

1019 Regents Blvd., Suite 204
Fircrest, WA 98466
Phone: (253) 566-2510
joan@3brancheslaw.com

Attorneys for GEO Defendants

1 PURSUANT TO STIPULATION, IT IS SO ORDERED
2
3

4 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production
5 of any documents in this proceeding shall not, for the purposes of this proceeding or any
6 other proceeding in any other court, constitute a waiver by the producing party of any
7 privilege applicable to those documents, including the attorney-client privilege, attorney
work-product protection, or any other privilege or protection recognized by law.

8 DATED: _____
9
10

The Honorable Benjamin H. Settle
United States District Court Judge

12 Jointly Presented by:
13
14

McNAUL EBEL NAWROT & HELGREN PLLC

By: s/ Theresa M. DeMonte
Daniel M. Weiskopf, WSBA #44941
Theresa M. DeMonte, WSBA#43994

16 *Attorneys for Plaintiff Jesus Chavez Flores*
17
18

ANNETTE L. HAYES
UNITED STATES ATTORNEY

19 By: s/ Sarah K. Morehead
Sarah K. Morehead, WSBA #29680
Assistant United States Attorney
20
21

22 *Attorneys for ICE Defendants*
23
24

III BRANCHES LAW, PLLC

By: s/ Joan K. Mell
Joan K. Mell, WSBA #21319
25
26

Attorneys for GEO Defendants

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of _____ ***Chavez-Flores v. ICE et al.***, **ECF Case No. 3:18-cv-05139-BHS-DWC**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature: